In regards to the FCC's Third Report and Order, I find issues with the wording of paragraph 19, specifically the following sentences:

"These price reductions must reflect the portion of the package price that is reasonably allocable to the device lease fee. In the event that an interested party (including a consumer, local franchise authority, or device manufacturer) alleges a violation of this "reasonably allocable" standard, the Commission will consider in its evaluation whether the allocation is consistent with one or more of the following factors: (i) an allocation determination approved by a local, state, or federal government entity; (ii) the monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and (iii) the actual cost of the navigation device amortized over a period of no more than 60 months."

Based on this this rule, an MVPD that offers a discount consistent with any of the three stipulations listed is in compliance with the Commissions ruling. However, the Commission has not stipulated a method for choosing which of the three factors MVPD's should use. There is a very distict difference between factors (ii) and (iii), which I will further detail.

The current formula for determining a monthly lease fee is detailed in § 76.923(f) and (g). The listed formula is:

Monthly Charge = (UCE + (HSC x HR)) / 12

According to the explanation listed and the formula, the cost of the navigation device is divided by 12, and some other number (HSC x HR / 12) is added to that to arrive at the Monthly Charge. So to re-write the exact same formula in a way that is easier to understand for the purposes of this comment:

Let N = (HSC x HR) / 12

The formula becomes:

Monthly Charge = (UCE / 12) + N

A discount consistent with factor (ii) from the Third Report and Order will be equal to the established Monthly Charge, resulting in the following formula:

Monthly Discount = (UCE / 12) + N

However, to be consistent with factor (iii) from the Third Report and Order would require a much different formula. Assuming the goal is to maximize the discount for the consumer, the amortization method should assume a final value of $0 for the navigation device. The Commission has authorized an amortization period not to exceed 60 months, so essentially the actual cost of the navigation device would be divided by 60 to determine the monthly discount.

This is described by the following formula:

Monthly Discount = *UCE* / 60

Comparing the two formulas, I find that the formula used to be consistent with factor (ii) results in a discount that is at least five times greater than the discount realized by using factor (iii). Therefore, MVPD's are likely to prefer to use the method outlined in factor (iii) to determine the appropriate discount. This is not conducive to retail device competition. The following is a real world example of why:

> Cable Company A charges $7.25 per month for the lease of the actual navigation device. Working backwards using the formula from § 76.923(f), we find that the purchase price for the navigation device cannot exceed $87. Dividing $87 by 60 months equals $1.45. Therfore, the expected discount using factor (ii) would be $7.25, whereas the discount using factor (iii) would only be $1.45.
>
> If we consider the same example, but this time we assume 25% of the cost of the lease is allocated to servicing the devices (the part of the formula represented by *N* above), the resulting discount for factor (ii) would still be $7.25, but the discount for factor (iii) would drop to approximately $1.09. Therefore, as *N* increases, the discount drops.
>
> In both scenarios, if the MVPD charges more than $1.45 or $1.09 (respectively) for a CableCARD, the customer will actually pay **MORE** money to lease a CableCARD than to just accept the MPVD's own bundled package, which includes the navigation device.

As is very evident, the Commission has authorized MVPD's to issue a negligible discount. This is hardly consistent with the purpose of the entire proceeding, especially with MVPD's that charge more to lease CableCARDs than the discount consistent with factor (iii).

Therefore, I am recommending that the Commission immediately ammend the Third Report and Order to exclude factor (iii) from paragraph 19. Alternatively, the Commission could stipulate that MVPD's should use the greater discount derived from each of the three factors.